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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/201,475	11/30/98	MILSTED	K SE9-98-016

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EXAMINER	
NGUYEN, N	
ART UNIT	**PAPER NUMBER**
2164	9

DATE MAILED: 07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev. 2/95)
*U.S. GPO: 2000-473-000/44602

1- File Copy

Office Action Summary

Application No.	Applicant(s)
09/201,475	Milsted et al.
Examiner	**Art Unit**
Nguyen Nga B	2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Nov 30, 1998*

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *45-78* is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *45-78* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirem

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). *5,6,7*

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

DETAILED ACTION

1. This Office Action is in response to the communication filed on November 30, 1998 , which papers has been placed of record in the file.

2. Claims 45-78 are pending in this application.

Drawings

3. The drawings are objected to because of the Draftsperson's notice, see form PTO-948 for detail. Correction is required.

Claim Objections

4. Claim 73 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 72. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 45 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Oda, U.S. Patent No. 5,703,646.

Regarding to claim 45, Oda discloses a method of determining an encoding rate for digital content, the method comprising the steps of:

encoding a selected sample of digital content for a predetermined period of time (column 14, lines 28-38); and

calculating an encoding rate using the selected sample and the predetermined period of time (column 14, lines 28-38).

Regarding to claim 57, Oda discloses a method of determining an encoding rate for digital content, the method comprising the steps of:

encoding a selected sample of digital content (column 14, lines 28-38); and

calculating an encoding rate using a selected sample size and the amount of time it took to encode the selected sample (column 14, lines 28-38).

7. Claims 50, 51, 53, and 54 are rejected under 35 U.S.C. 102(e) as being anticipated by DeJaco, U.S. Patent No. 5,911,128.

Regarding to claim 50, DeJaco discloses a method of determining an encoding rate for digital content, the method comprising the steps of:

retrieving a previously calculated encoding rate (column 6, lines 40-50);

encoding digital content (column 6, lines 40-50);

calculating a current encoding rate for the encoding of the digital content (column 10, lines 37-60); and

updating the previously calculated encoding rate using the current encoding rate (column 10, lines 37-60).

Regarding to claim 51, DeJaco further discloses retrieving a previously calculated encoding rate corresponds to a specific encoding bit rate and a specific encoding algorithm (column 10, lines 45-50).

Regarding to claim 53, DeJaco further discloses averaging the previously calculated encoding rate and the current encoding rate; and storing the average encoding rate as a new value for the previous calculated encoding rate (column 10, lines 37-60).

Regarding to claim 54, DeJaco further discloses averaging the previously calculated encoding rate and the current encoding rate; and storing the average encoding rate as a new value for the previous calculated encoding rate if the encoding rate does not deviate from the previously calculated encoding rate by configured threshold (column 10, lines 37-60).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oda, U.S. Patent No. 5,703,646 in view of Kato et al, U.S. Patent No. 5,675,379.

Regarding to claim 46, Oda does not explicitly teach displaying the encoding rate during the encoding of the digital content. Kato teaches displaying the encoding rate during the encoding of the digital content (column 3, lines 25-30). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature in Oda's for the purpose of providing encoding rate information during encoding the digital content.

10. Claims 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oda, U.S. Patent No. 5,703,646 in view of Official Notice taken by Examiner.

Regarding to claim 47, Oda does not explicitly teach storing the encoding rate; and associating the encoding rate with a specific encoding bit rate and a specific encoding algorithm. Official Notice is taken that storing information in a memory is well-known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature with Oda's for the purpose of keeping the encoding rate information for future use.

Regarding to claims 48-49, Oda does not explicitly teach displaying the percentage of digital content encoded as compared to the total amount of digital content to be encoded, displaying the amount of time remaining to encode the total amount of digital content to be encoded. Official Notice is taken that displaying the encoding information during the encoding of digital content is well-known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature with Oda's for the purpose of providing the encoding information during encoding the digital content.

11. Claims 52 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeJaco, U.S. Patent No. 5,911,128 in view of Kato et al, U.S. Patent No. 5,675,379.

Regarding to claims 52 and 56, DeJaco does not explicitly teach using the previously calculated encoding rate for displaying the encoding rate during the encoding of the digital content. Kato teaches using the previously calculated encoding rate for displaying the encoding rate during the encoding of the digital content (column 3, lines 25-30). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature in DeJaco's for the purpose of providing encoding rate information during encoding the digital content.

12. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeJaco, U.S. Patent No. 5,911,128 in view of Official Notice taken by Examiner.

Regarding to claim 55, DeJaco does not explicitly teach storing the average encoding rate includes associating the previously calculated encoding rate with a specific encoding bit rate and a

specific encoding algorithm. Official Notice is taken that storing information in a memory is well-known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature with DeJaco's for the purpose of keeping the encoding rate information for future use.

13. Claims 58-71 are system claims that parallel limitation as found in claims 45-57, therefore, are rejected by the same rationale.

Claims 72-78 are written in computer readable medium that parallel limitation as found in claims 45-49 and 57, therefore, are rejected by the same rationale.

Conclusion

14. Claims **45-78** are rejected.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nga B. Nguyen, whose telephone number is (703) 306-2901.

The examiner can normally be reached on Monday-Friday from 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A. Millin, can be reached on (703)308-1065.

16. **Any response to this action should be mail to:**

Commissioner of Patents and Trademarks

c/o Technology Center 2700

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

or:

(703) 308-5397 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)305-3900.

Nga B. Nguyen
July 26, 2001

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100